WORLD SHIPPING COUNCIL RESPONSE
TO THE MID TERM-REVIEW OF THE EU MARITIME TRANSPORT STRATEGY

21 April 2015

About the World Shipping Council

The World Shipping Council (hereafter the WSC) is a non-profit trade association with offices in Brussels and Washington, D.C. representing the interests of the international liner shipping industry in public policy and regulatory matters.¹ The WSC’s membership comprises 28 member companies² accounting for more than ninety percent of global liner shipping capacity. WSC is inscribed in the EU Registry of Interest Representatives (registration no. 32416571968-71), and further information about the organisation can be found at www.worldshipping.org.

WSC Contribution to the Mid-Term Review of EU Maritime Transport Strategy

The WSC welcomes the opportunity to contribute to the mid-term review of the EU Maritime Transport Strategy and would be pleased for the European Commission to make this submission publically available on its website under WSC’s name. The WSC and its staff are also at the disposal of the EC in case further details on the submitted information are required. As a further contribution to the mid-term review, the WSC co-sponsored a joint industry statement with other international shipping organisations (Annex 1), that was adopted during the first European Shipping Week (2-6 March 2015). That statement reflects a wide ranging set of relevant concerns and issues for the upcoming EU Maritime Transport Strategy review.

In this current submission, the WSC would like to focus on the need to finally make good on the commitment to establish a genuine single market for EU shipping and ‘a maritime space without barriers’. Doing so will answer a number of specific questions which are raised in the consultation questionnaire concerning: ‘simplifying administrative formalities for shipping and the maritime carriage of goods’; ‘the promotion of short sea shipping’, and ‘the deployment and promotion of digital maritime services’.

¹ “Liner shipping” involves cargo vessels engaged in regularly scheduled services, including container vessels and roll-on/roll-off vessels.

² See, http://www.worldshipping.org/about-the-council/member-corporations
1. EU Maritime Transport Policy Should Prioritise an EU Internal Market for Shipping

Today liner shipping companies annually transport more than 40 million TEUs of European export and import cargo, which comprises roughly two-thirds of the EU’s seaborne trade by value, or about EUR 1.41 trillion worth of goods. Liner shipping services transport a significant percentage of the approximately 10 million TEUs of feeder cargo moving to and from the EU’s transshipment hubs. These services provide essential global connectivity for the EU’s businesses and consumers. However, international or deep sea shipping services also play a vital role in the EU’s internal trade transporting 4 million TEU or 20% of the pure intra-EU cargo moving between EU ports. Overall, liner shipping activities – excluding related services such as warehousing or onward distribution - deliver a yearly contribution to European GDP of around EUR 59 billion. Liner shipping companies employ around one-quarter of a million EU citizens with annual remuneration in excess of EUR 7 billion. They make capital investments in EU fixed assets in excess of EUR 7 billion per year. This is a substantial contribution to Europe’s trade, economic and social well-being.

However, the liner shipping sector’s current activities, while considerable, are less than its potential contribution to the European economy. Realising that potential is not only economically but also environmentally desirable. A modern containership emits 3-10 grams of CO₂ per freight-ton-kilometre, compared to 20-150 grams for trains, 60-100 grams for trucks, and 400-500 grams for aircraft. Consequently, enhancing the role of the most carbon efficient means of transport would be the optimum policy choice for achieving the much sought after ‘green growth’ that the EU has called for. The promotion of short sea shipping – understood as maritime transport services carried out within a geographic area, irrespective of whether the entity providing such services is European or global in scope – is a key to increase the shipping sector’s share of intra EU transport. To achieve this, long overdue measures are needed.

Today maritime commerce to, from, and between the Member States of the Union is governed by a mosaic of diverging rules and requirements that are established at national, regional, or even port level, as well as cumbersome documentary requirements, different data filing systems, and sub-optimal sharing of data. A renewed drive is needed to put maritime transport on a competitive level playing field with other modes of transport. This requires reductions in administrative burdens and the costs of undertaking maritime transportation in the European Union.

Pursuing this strategy would fulfil long overdue political commitments. Since at least 1999, the Commission has expressed a desire to achieve these goals by creating a genuine single market for maritime transport. This was confirmed again in 2009, when the European Maritime Transport Space Without Barriers initiative was launched to “extend the Internal Market to intra-EU maritime transport”. In October 2012, the Single Market II Act underlined the wider importance of the EC’s ambitions in this area, rightly designating it as a key contribution to a European economic growth strategy. Most recently, in July 2013 the EC published a ‘Blue Belt Communication’ with legislative and non-legislative commitments to reduce the administrative burden for intra-EU maritime transport to a comparable level with other transport modes. Unfortunately, for more than 15 years, the shipping industry has been awaiting the promised measures or has witnessed efforts that have proved damagingly counterproductive. Two recent examples illustrate this: the implementation of the EU Reporting Formalities Directive (2010/65/EC), and the attempt to introduce a harmonised electronic cargo manifest. Both are
prime examples of issues that should be addressed following the mid-term review of the EU Maritime Strategy.

- **Reducing Administrative Burden through a Revised Reporting Formalities Directive**

  The EU Reporting Formalities Directive (2010/65/EU) or RFD aims to simplify, harmonise, and rationalise administrative procedures and reporting requirements for maritime carriers calling at EU ports. It requires that by 1 June 2015 Member States implement measures to allow the electronic submission and reception of reporting formalities concerning vessels, their crew, and cargo via a national single window\(^3\). Paper submissions may no longer be required. It also seeks to maximize the re-use among authorities of the information submitted electronically to the national single windows (NSW) both within and between Member States. It thus aims at a ‘once only submission’ of information. With these objectives in focus, the RFD was welcomed by WSC and the maritime sector when the legislation was adopted in 2010. Regrettably, an inadequate legal basis and the Directive’s implementation have prevented the harmonised EU wide solutions necessary for the Directive to offer genuine benefits to the shipping industry. Three critical problems can be identified.

  First, despite a clear commitment in article 3.2 of the Directive, there has been no effort to harmonise the national reporting requirements that derive from Member State legislation, as opposed to international agreements (such as the IMO FAL Convention) or EU legislative acts. Second, the concept of a national single window - the centre piece of the Directive - has been seriously compromised as many Member States will implement the Directive on the basis of port level, not national, entry points to which maritime carriers must submit their data. There is also significant uncertainty as to whether information submitted to port single windows will be shared automatically at a national level let alone between Member States, thus compromising the ‘once only submission’ principle. Third, in the absence of binding functional and technical specifications for the way that national single windows interface with industry, each Member State and/or port is developing its systems independently of each other and without regard for consistency across the EU. Consequently, carriers face the very costly prospect of developing IT systems that must connect to a multitude of differently functioning and constructed single windows both at Member State and even port level. The alternative is to pay local third party service providers to transmit a carrier’s data. This extra expense and inefficiency is the opposite of the simplified cost cutting environment that carriers anticipated. Simply replacing old, paper-based complexity and divergence with new IT-based complexity and divergence is not a recipe for reducing costs or administrative burdens.

  Adding to the industry’s concerns, with less than one month before the Directive takes effect, the industry has no overview concerning the state of readiness in Member States, their chosen implementation models, the IT requirements for the submission of information, nor even a complete list of national contact points to whom the shipping industry can turn for vital information. This leaves industry no time to introduce the documentary processes and IT adaptations and conformance tests that will be necessary to ensure compliance with the new reporting requirements as of June 1, 2015.

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3 Article 5.1: Member States shall accept the fulfilment of reporting formalities in electronic format and their transmission via a single window as soon as possible and in any case no later than 1 June 2015.
The present situation eliminates all of the original, intended benefits of the Directive. The European Commission has stated that it will not postpone implementation of the Directive; however, it is obvious that the current course is not the way to build a “maritime space without barriers”, and that it will not put intra-EU shipping in a position of competitive parity with land-side freight operators, such as road hauliers, who may provide intra-EU goods transport services without any such administrative burden.

A revision of the Directive should be a priority action for the mid-term review of the EU Maritime Transport Strategy and should establish a legal basis that is capable of delivering harmonised data requirements and transmission solutions and a genuine pan-EU system for reporting formalities. Pending this revision, Member States should keep their existing channels for reporting formalities in operation after June 1, 2015 and at least until the Directive is revised and suitable harmonized arrangements are delivered. Otherwise, the industry would face the entirely unacceptable situation of first having to arrange for compliance with national requirements under the existing Directive, to be followed by new requirements and costs under a future, revised Directive.

- **Establishing a Harmonised Electronic Cargo Manifest**

   Closer coordination between transport and customs administrations is badly needed in the EU from the identification of policy objectives through to ensuring their delivery. Without such coordination and cooperation in the future, the EU goals of establishing a maritime space without barriers and boosting the share of intra-EU goods movement by sea will not happen.

   One particular obstacle stands out in this regard. While goods moved by rail or road bear no such burdens, EU goods moved by ship between two EU ports automatically lose their presumption of EU status, only to fall subject to full customs formalities on re-entry.4 The Single Market Act II and the July 2013 ‘Blue Belt Communication’ committed to resolving this problem and reducing other associated administrative burdens by means of a harmonised electronic cargo manifest or ‘e-manifest’.

   This initiative was strongly supported by the shipping industry. WSC and ECSA made detailed joint proposals for how this could be practically implemented. In these proposals, the e-manifest would serve two purposes: (1) To provide vessels, including those calling at third country ports between EU port calls, with a simple and harmonised means to indicate the customs status of goods to Customs at any EU port, enabling the swift release of EU goods while ensuring non-EU goods remain under Customs control; and, (2) To provide an electronic filing with a uniform, harmonised data set sufficient to fulfil - in every EU port - national manifest filing requirements, including, where applicable, the IMO FAL Form 1 and 2 (vessel arrival and cargo declaration) reporting formalities as required under the Reporting Formalities Directive.

   To enable the optimal reuse of data - in line with expressed EU policy objectives - the e-manifest would be updated by maritime carriers and shared between Member States as the vessel called successive EU ports as new cargo was loaded and discharged. This would dramatically simply processes and would reduce administrative burdens by eliminating duplicative submissions and exception handling.

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4 The exception from this loss of presumption of Union status is the so-called Regular Shipping Service (RSS) concept whose application, for a variety of reasons, is limited.
Regrettably and despite being supported by several Member States, these proposals were repeatedly diluted and ultimately neutered by disagreements within the Commission. The only surviving remnant of the Blue Belt Communication policy resides within the draft Implementing Provisions of the new Union Customs Code, which foresees a ‘Customs goods manifest’ (CGM) which acts solely as a customs goods status indicator and would be incapable of meeting other cargo manifest filing requirements, including requirements by national Customs administrations. Moreover, the possibility that the CGM could nonetheless be included within a wider data submission, namely the carrier’s regular cargo manifest, is now threatened by DG TAXUD proposals for a centrally developed ‘shared trader interface’ which Member States may use to receive the CGM, but which would by default reject any such wider data submission. This frustrating development runs counter to the Commission’s written commitment to encourage Member States’ acceptance of the Customs goods manifest as part of a wider manifest submission. Unless Member States eschew the use of this shared trader interface and accept the CGM as part of a wider manifest submission using their existing reception channels, the outcome will be that, instead of combining multiple carrier submissions into a single harmonized submission, the CGM will simply add one more. Even in the best case scenario where Member States accept the CGM as part of a wider manifest submission, the maritime sector will still be stuck with non-harmonised and non-reusable cargo manifests.

It will be grossly disappointing if this is the Blue Belt Initiative’s legacy and contribution to the facilitation of intra EU shipping and the Single Market Act II’s economic growth targets. Consequently the WSC strongly urges that the mid-term review of the EU Maritime Transport Strategy reprioritise work on this issue in order to reduce the level of Customs formalities that still face maritime carriers moving goods within the Customs Union and to simplify administration via uniform manifest reporting between Member States where data is reused to the greatest extent possible.

➢ Deployment and Promotion of Digital Maritime Services.

As discussed in the above sections of this submission, the European Commission should focus its efforts on streamlining, harmonising, and facilitating the data requirements and transmission of business-to-government information. In January 2013, WSC, jointly with ECSA, submitted a response to the Commission’s ‘Public Consultation on the European Union e-Freight Initiative’ (see annex 2). In this response, WSC disagreed with the assertion that current commercial (business to business) information exchange practices ‘lead to an under-exploitation of multi-modal transport’. The industry is constantly updating and improving its information technology systems and looking for ways to facilitate the efficient flow of trade. In its consultation, the Commission announced it was considering the development of ‘an overall framework for information between the different actors in the transport logistics chain … in combination with the necessary standards, administrative governance and legal provisions...’ As set forth in the joint WSC and ECSA submission, there are multiple reasons why the EC should not pursue such objectives.

2. Global Rules Required for Ship Safety and the Environment

As indicated in the attached joint industry statement (Annex 1), the most appropriate place for the adoption of new ship safety and environmental rules remains the International Maritime
Organisation. The inherently global nature of shipping means that global rules are required in order to facilitate international commerce, to avoid distortions of competition, and to avoid adopting policy initiatives with insufficient legal scope or reach to achieve their aims.

3. Conclusions

WSC respectfully submits that there is no need for the Commission to regulate or involve itself in matters that are the appropriate domain of the private sector, such as the form of business-to-business communications and exchange of information. Nor do we believe that a need exists for the Commission to develop and adopt ship safety and environmental rules, which are more appropriately addressed by the International Maritime Organisation’s global reach and the IMO’s ability to establish common global standards for ships engaged in international commerce.

In contrast, the European Commission is uniquely positioned and able to build a European maritime space without barriers. It is evident that Member States will never make this a reality acting on their own initiative or without clear direction from the Commission. Achieving this goal would benefit not only the shipping industry but also European importers and exporters, businesses and consumers, and the environment. To this end, we strongly urge the Commission to take much bolder steps to harmonise the content and method for transmitting vessel and cargo, including manifest, reporting formalities across all EU Member States. A revised Directive 2010/65/EC with the necessary legal basis to do this should be the Commission’s clear aim following the current review. Furthermore, a more effective cooperation with DG TAXUD to deliver the Blue Belt Communication’s broad based commitments is also needed. A key element in that policy should be implementation of a harmonised e-manifest that serves more than just a Customs goods status functionality. The Commission should conclude this long unfinished business without further delay and rectify a situation that finds shipping the only transport mode that is denied the benefits of the internal market. This is a task truly worth focusing on in this midterm review of EU Maritime Strategy.

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Annex 1

Joint Industry Statement on the Mid-term Review of the EU’s Maritime Transport Policy

4 March 2015

In June 2014, the Council invited the European Commission to present a mid-term review of the EU’s Maritime Transport Policy until 2018 and outlook to 2020. Eager to provide the Commission with valuable input, ECSA, ECASBA, ETA, EuDA, CLIA Europe, Interferry and WSC have decided to make the review exercise the cornerstone of the European Shipping Week 2015. Following the very fruitful discussions held in the context of the week’s flagship conference entitled “Charting the route of EU shipping policy: An input to the EU maritime transport strategy review”, the main representative bodies of the shipping industry have adopted the following statement.

Shipping is a global industry faced with increasingly fierce competition. Shipowners need a stable and predictable EU fiscal regime and a regulatory framework in accordance with international rules in order to maintain their competitiveness and ensure shipping’s beneficial impact to the EU economy and society, while maintaining a global level playing field. These international rules, including environmental and safety regulations, which need to be adopted by the International Maritime Organisation in order to be global, should promote the highest standards for worldwide quality shipping, in line with the interests of our industry.

The EU discourse surrounding the industry’s sustainability should be re-evaluated. Shipping is the most efficient form of commercial transport as it emits far less per tonne/km than other modes and carries around 90% of goods worldwide. When it comes to CO2 emissions, far from being the root cause of the problem, shipping is and should be viewed as part of the solution. By shifting more cargo and passengers to the sea, the EU can thus exploit the superior energy-efficiency of shipping to reduce its global CO2 emissions. The shipping industry does not rest on its laurels and is actively pursuing the reduction of its carbon footprint, and indeed those of other gas emissions for example SOx and NOx, but in order to do so effectively, EU environmental standards should be aligned with those at global level.

The shipping industry needs skilled labour as it plays an integral part not only on-board ships but also, and perhaps more importantly, in the wider maritime cluster. Without a new generation of seafarers and shore-based shipping personnel, the whole maritime cluster stands to lose its know-how. The key objective must be the improvement of the attractiveness of the seafaring profession, which can be achieved, among others, through the reduction and streamlining of administrative formalities and the fight against the risk of criminalisation of seafarers following maritime accidents or discriminatory restrictions on shore leave.

Furthermore, the internal market has not yet delivered its full potential for shipping, as significant administrative burdens and customs hurdles remain throughout Europe, preventing the EU from reaping the fruits of a truly European Maritime Transport Space without Barriers. Customs procedures are burdensome and place shipping at a disadvantage when compared to other...
modes of transport, resulting in huge productivity losses and placing unnecessary stress on maritime professionals. Addressing any potential abusive restrictions on market access to port services and/or inefficiencies observed in European ports would also be mutually beneficial to the EU economy and the EU shipping industry. By making waterborne transport more attractive to shippers, the EU also stands to make strides in its efforts to reduce its CO2 emissions.

For shipping to remain a facilitator of trade, a provider of jobs and a dynamic sector of the economy, the EU must carry on with what it does best: continue its role as a commercial heavyweight. Free Trade Agreements are mutually beneficial to the EU and the shipping industry as they ensure the prosperity of the Union, by relying on the services of the industry. Consequently, it is vital to keep the open seas secure and eliminate all threats of piracy and armed robbery that put human life as well as the global logistics chain at risk.

The EU institutions should also ensure a more efficient deployment of adequate Port Reception Facilities in all EU ports and facilitation of the seafarers’ movement from third countries within the Schengen Area, as well as other measures that allow the cruise industry and other sectors of the shipping industry to continue supporting the sustainability of coastal communities through trade and marine tourism.

Finally, special reference is made to a recent topic that has been causing much concern to the industry: migrants at sea and in particular the recent events relating to the growing refugee and migrant crisis in the Mediterranean. The industry will never shy away from its obligation of assisting any person at sea faced with serious danger. It must be recognised, however, that in spite of their best efforts, crews are not trained in humanitarian operations and ships are scantily equipped to deal with dozens or hundreds of distressed people, including women and children. The EU and Member States must find a solution to this ever deepening crisis, taking steps to ensure that migrants found at sea can be taken ashore at the earliest possible opportunity in order that they can be given the correct and necessary humanitarian and medical care and support under the best possible conditions, and these are only available ashore. It should be understood that, as in the case of piracy, the shipping industry should not be relied upon to execute tasks and undertake initiatives that should be the sole prerogative of governments and international bodies.

The organisations endorsing this statement are:

ECSA, the European Community Shipowners’ Associations
CLIA, Cruise Lines International
ECASBA, European Community Association of Ship Brokers and Agents
ETA, the European Tugowners Association
EuDA, European Dredging Association
Interferry
WSC, the World Shipping Council
Annex 2

January 11, 2013
European Commission
Directorate-General for Mobility & Transport
Unit D1 – Maritime Transport and Logistics
B-1049 Brussels, Belgium

RE: Public Consultation on the European Union e-Freight Initiative – Joint Response by WSC and ECSA

Introductory Comments
The World Shipping Council (“WSC” or the “Council”) and the European Community Shipowners Association appreciates the opportunity to offer comments on the issues raised in the “Public Consultation on the European Union e-Freight Initiative”, which was circulated on October 26, 2012. The Council is a trade association of 29 liner shipping companies that together account for more than 90% of the world’s containerized shipping capacity. The WSC members also operate vehicle carriers, roll-on/roll-off vessels, heavy-lift vessels, and refrigerated cargo vessels on a liner basis. The liner shipping industry transports more than 65 percent of the EU’s seaborne trade by value (exclusive of intra-EU shipping).1

The WSC and ECSA begin these comments by noting that they are aware of no facts that would support an allegation that commercial information exchange practices “lead to an under-exploitation of multi-modal transport”. The industry is constantly updating and improving its information technology systems and constantly looking for ways to facilitate the efficient flow

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1 The World Shipping Council is registered with the Registry of Interest Representatives, ref. 32416571968-71. Additional information about the Council and the liner shipping industry is available at www.worldshipping.org. The European Community Shipowners’ Associations ECSA represents the interests of the national shipowners’ associations of EU Member States and Norway. ECSA is the registered with the Registry of Interest Representatives, ref. 59004966537-01.
of trade. Ocean carriers have invested hundreds of millions of Euros into world-wide systems that they use to manage every aspect of their transportation networks. Those systems are constantly being refined to better serve customers and to make the business more efficient, and to comply with various government information filing requirements.

The Commission could play a constructive role in improving the efficiency of required information filing with the 27 EU Member States, and thus the WSC and ECSA may be able to support the concept of a “Single Window”, although as discussed herein, we believe that the e-Freight Initiative consultation document’s description of the current Single Window efforts for maritime commerce does not reflect the current implementation work on Directive 2010/65 (EU) and, as highlighted in the Council and ECSA’s recent communication to DG MOVE, that redirected and re-focused efforts are needed with respect to this initiative.

The other elements of the e-Freight Initiative, however, are subjects that the Council and ECSA believe are better left to the private sector to address. The stated objective of the e-Freight Initiative is to develop “an overall framework for information exchange between the different actors in the transport logistics chain ... in combination with the necessary standards, administrative, governance and legal provisions.” While efficient information exchange with EU government authorities is a legitimate issue for the Commission to examine, information exchanges between private sector commercial parties should be left to the private sector. Specifically, WSC and ECSA do not believe that DG MOVE should proceed further in consideration of how it would develop, promote, or impose:

a. A Single Transport Document
b. “Freight journey planners and booking tools”, or
c. The private sector’s development and use of cargo “tracking and tracing” technology and its products.

**The “Single Window”**

The concept of a “Single Window” has merit for the EU and the industry to pursue together, but such an effort would benefit from greater clarity about the scope of what is being considered. DG TAXUD and the 27 EU Member States’ Customs authorities already require the filing of substantial cargo information from arriving carriers and shippers. While a “single EU window” for this supply chain data would be most appreciated by the industry, we recognize that this is unlikely to be within the scope of an initiative by DG MOVE.

Accordingly, if a “single window” in the context of an e-Freight initiative is defined to mean a single window for the arriving carrier to submit all required conveyance and related

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information, in a common format for all arriving EU conveyances, through either a single EU portal or 27 Member States using a single, common set of information system functional and technical specifications, including common data formats and data structures, then the industry would be most interested in participating and supporting such an objective. If the “single window” will not produce a uniform European approach to the data to be acquired and the IT system specifications governing the submittal and exchange of the data— which, unfortunately, seems to be the current direction of the implementation work -- then we do not believe that the initiative would have value. We already have separate data filing requirements at an EU national level. There is no need for the Union to create an expensive new data filing requirement if the data filings would vary by Member State.

**A Single Transport Document**

The e-Freight consultation document alleges that “seamless information flows is a prerequisite” for transport logistics. Putting aside the issues of what “seamless information flows” actually means and what it involves, this assertion appears to form the basis for an argument that the EU should consider “developing an electronic Single Transport Document (electronic multimodal waybill) allowing for the provision of the same information to “the whole multimodal chain and for business-to-business operations ... [and that] shall also become the source of information for the fulfillment of reporting obligations.” This is a subject area fraught with substantial and complex questions of law and practice, as well as issues relating to regulatory compliance\(^3\) and international cargo liability regimes. The consultation document does not even begin to cover them. We do not believe there is a commercial or regulatory need for the e-Freight Initiative to become mired in this subject matter. Moreover, as explained at various previous occasions, shipping as an international industry needs international rules and not a regional (European) regime.

**“Booking tools” and “freight journey planners”**

WSC and ECSA respectfully suggest that commercial cargo booking systems and cargo “journey planners” should be matters within the sole purview of the private sectors to design and implement, with the recognition that regulatory compliance information may need to be obtained, stored and distributed by the responsible parties’ IT systems. So long as the regulated commercial parties are able to submit required data to the competent regulatory authorities, there is no compelling case for DG MOVE to consider regulating such matters or systems.

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\(^3\) For example, transport documents may vary according to: the various cargo liability regimes of the importing or exporting country and of the mode of transport; the Customs, security or trade regulations of the importing or the exporting country; and, the commercial terms of agreement between the carrier and the shipper.
**“Tracking and tracing” technology**

The WSC, its Member companies and ECSA are active participants in ISO standard setting efforts in this area as well as other related initiatives. Recently, the WSC has proposed a new ISO initiative regarding the development of container monitoring and tracking standards in response to emerging market interest in such technologies. We note, however, that: 1) the market demand for such technology products is very uneven and evolving; 2) different technologies create different operational issues and challenges, 3) the data products from such devices vary and are valued differently by different customers, and 4) the usage and capabilities of these technologies, including the information to be collected, stored and transmitted by them, should be defined by the operator of the device based on its business model and requirements, not be superimposed by governments. This subject area is not a candidate for regulatory intervention by the EU or any other government except for issues such as spectrum and bandwidth allocation and health and environmental issues stemming from the usage of various types of technologies.

**Legal Requirements**

The questionnaire states at section 4.1.M2 that: “This measure could establish binding legal requirements on the implementation of services (e.g. as regards single windows, information sharing, single transport document) or on the use of standards in development and implementation of services.” The scope of the statement is breathtaking, as is the scope of the potential chaos it could cause if implemented.

Because few specifics are offered, it is not productive to engage in a detailed analysis of the many implications of the statement regarding possible legal requirements, including possible extra-territoriality considering the international nature of the EU’s intermodal supply chains, and including restrictions on the freedom of contract and confidentiality between commercial parties.

**Summary**

The private sector has invested hundreds of millions of Euros in its legacy IT systems. When those systems need to be continuously upgraded and improved, the industry makes the necessary capital investments to improve its operational efficiency and to facilitate compliance with applicable regulatory requirements. The e-Freight Initiative questionnaire raises very substantial questions about huge, new capital investments that are not needed for regulatory compliance, and are not viewed as needed by the commercial parties who own and operate the affected IT systems and transport the cargo. There is also no discussion of the fact that, after all of the money necessary to build such an envisioned system is spent and the business disruption is endured, there is no reason to think that what would be produced would be any
better than what the market would produce if left to adapt to customer demand and market innovation and development.

The Commission would do well to recall the lessons learned from the advance cargo information filing system developed under Regulation 1875 by the Member States’ Customs authorities and DG TAXUD. That project took six years to complete, and ocean carriers were required to make their IT systems compatible with the systems of each of the various Customs services in the 27 EU Member States in which they do business. The direct costs on carriers of re-programming and software and hardware purchases are conservatively estimated to have been in the tens of millions of Euros. That does not include the time and the hundreds of millions of Euros spent by the Commission and the Member States. And yet, the data being acquired by that system and the system itself are subject to continuing reassessment about their adequacy; the Modernized Customs Code was scheduled to become effective in 2013 requiring new regulations and IT systems modifications, adaptation and development and deployment as set forth in more than 4000 pages of draft provisions and “business process models”; and, the EU is considering the adoption in the coming months of a Uniform Customs Code to replace the Modernized Customs Code before it comes into effect, triggering the need to review, revise and amend the already produced implementation material for the Modernized Customs Code. A plea for careful analysis, clear identification of common important priorities, and regulatory stability is warranted.

The system envisioned by the e-Freight Initiative consultation documents would cover far more economic actors, have a much wider scope, and encompass much more information than the cargo screening system discussed immediately above. While we recognize the e-Freight Initiative has not developed beyond a very high level concept, we recommend that its assumptions and premises be carefully reexamined. As with analogous proposals that were considered several years ago in the U.S. at the urging of various large, corporate data system integrators -- who thought that they could serve as “data integrators” and facilitators of “seamless” information flows -- and that were rejected for good reason by both industry and the U.S. government, a careful, detailed and public consideration of what information is needed by governmental authorities, from whom, and by when, should be the initial building block of any regulatory initiative. Such a review would also identify that many of the apparent assumptions in the consultation document are not well founded.

For example, allegations that there is a “limited level of information on multimodal transport services and of multimodal booking tools” are simply not true in international liner shipping. In addition to the Internet-based booking tools maintained by the individual shipping lines, there are also competing “portals” that allow shippers to electronically choose services and routings, make bookings, track shipments, and access numerous other logistics services.
(See, e.g., www.INTTRA.com; www.GTNexus.com; www.CargoSmart.com) The United Nations Economic Commission for Europe has recognized these portals and has noted that the work of the UNECE in supporting the evolution and maintenance of the UNCEFACT Recommendations and the UN/EDIFACT message protocols has facilitated the use of electronic tools by the portals. See http://tfig.unece.org/contents/shipping-portals.htm. In addition, third party logistics providers and ocean carriers alike continue to introduce increasingly sophisticated supply chain management tools in response to customer demand.

Second, the conclusion from the hypothetical case study in the background document is that the primary benefit expected from the e-Freight Initiative is the replacement of human involvement in the transportation system by automation. Although the industry is constantly looking for ways to improve the efficiency and productivity through automation, international intermodal transportation is a service that operates in a complex environment. Road, rail, and port congestion, weather, labor disruptions, inland waterway water levels, equipment breakdowns, financial and banking transactions, customer demands regarding changed routing and discharge of goods (“cargo diversion”) and government regulators -- all may affect a shipment during transit and may require the intervention of well-trained and experienced people. The suggestion that automation by itself can improve the response to these complex situations is untested and somewhat naïve.

The Commission should not try to develop a comprehensive regulatory structure to manage commercial data or IT systems. There is always room for improvement, and commercial solutions are in fact constantly improving. These are matters for the private sector to address.

The above does not mean that the well-intentioned objectives of the Commission March 2011 White Paper for the creation of a Single Transport Area cannot and should not be pursued. WSC and ECSA would specifically encourage the immediate implementation of the proposed Single Market II package for the creation of a true internal market for maritime shipments akin to the arrangements that already apply to other modes of transport. Similarly, we would encourage that the planned implementation of the maritime reporting Directive be re-set so as to better and more effectively meet the stated goals of the Directive of simplification, facilitation and harmonization. And we would encourage that the Union’s Customs procedures be simplified and streamlined in the proposed Union Customs Code to reduce the administrative and compliance costs of European economic operators while facilitating legitimate trade.
Sincerely,

Damian Viccars
WSC Brussels Representative

Alfons Guinier
ECSA Secretary General